

**FINAL REPORT**  
**AVON HILL NEIGHBORHOOD CONSERVATION DISTRICT BOUNDARY STUDY**

Submitted to the  
Cambridge Historical Commission  
by the

Avon Hill Neighborhood Conservation District  
Boundary Study Committee

Arthur Bardige, Co-chair  
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Robert Crocker  
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Transmitted to the  
CAMBRIDGE CITY COUNCIL  
With the unanimous endorsement of the  
CAMBRIDGE HISTORICAL COMMISSION

NOVEMBER 3, 2006



## Summary

The Avon Hill Neighborhood Conservation District Boundary Study Committee originated with petitions filed by 18 property owners on Raymond Street seeking to be excluded from the District. The Cambridge Historical Commission accepted the petitions on August 4, 2005, and the City Manager appointed the Study Committee on November 5. The committee met more than a dozen times to take public testimony and to formulate its recommendations.

The Cambridge Historical Commission charged the Committee "to consider the boundaries and other possible amendments to the order or governance issues [of the Avon Hill Neighborhood Conservation District Commission] and the potential for combination with the Lower Common study area." After extensive discussion, the Committee makes the following recommendations, which are fully described in the Report:

***Recommendation 1:*** The Committee unanimously recommends that Raymond Street should remain in the district, and that the problems that Raymond Street petitioners and others have encountered are better dealt with through the jurisdiction and governance changes recommended below.

***Recommendation 2:*** Clarify the general purpose and approach of the District by amending the preamble of the Avon Hill NCD Order.

***Recommendation 3:*** Eliminate a provision of the Order requiring NCD review when a special permit or zoning variance is required.

***Recommendation 4:*** Require binding review of aluminum or vinyl siding and aluminum, vinyl, or vinyl-clad windows where they currently do not exist outside as well as within the National Register portion of the District.

***Recommendation 5:*** Require binding review for alterations that affect the building envelope, including altering, adding or removing bays, dormers, roof shapes and porches outside the National Register portion of the District.

***Recommendation 6:*** Eliminate non-binding determinations and replace them with advisory administrative reviews by CHC staff.

***Recommendation 7:*** Change the guideline regarding total lot coverage from 30% to 35% in the A-2 zone and 40% to 45% in the B and C-1 zones.

***Recommendation 8:*** Add a conservation guideline for architectural features such as siding, trim and windows, clarifying that these features should generally be compatible with the architectural style of the building. Specifically state that vinyl fencing, vinyl siding, and vinyl windows should not be used.

***Recommendation 9:*** Allow up to two additional Cambridge residents living outside the District to serve on the Commission (one as a member, one as an alternate), with preference given to those who have served on other NCD commissions.

***Recommendation 10:*** Encourage residents of the District to nominate potential candidates for membership.

**Recommendation 11:** Enforce the provision of the Ordinance that Commission members are limited to two consecutive terms of service. Allow former members to be considered for re-appointment after one year of retirement.

**Recommendation 12:** Recommend to the City Manager that he appoint a new Commission of members and alternates who have not previously served.

**Recommendation 13:** Assign the Historical Commission clear responsibility for the oversight of NCDs. The Historical Commission should hold periodic joint meetings with the Avon Hill NCD Commission to review the operations of the District and report its findings to the City Manager and the City Council.

**Recommendation 14:** The Avon Hill NCD Commission should continue to use the hearing procedures recently established.

**Recommendation 15:** The Historical Commission should increase training of Commission members and should consider establishing a Code of Conduct for Commissioners.

**Recommendation 16:** The Historical Commission should consider increasing its public education efforts.

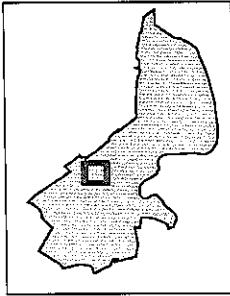
**Recommendation 17:** The Historical Commission should consider recommending that the City Council amend the NCD Ordinance so as to consolidate some of the city's smaller NCDs under one citywide NCD commission. Consolidation of the Avon Hill NCD with the proposed Lower Common NCD is not recommended.

The Committee determined that the overall goals of the Avon Hill Neighborhood Conservation District Commission are supported by the neighborhood at large, and that diminishing its boundaries would weaken its ability to perform its mission. Changes in jurisdiction are balanced to make the process clearer and more effective, while maintaining approximately the same regulatory burden on property owners. Recommended changes in governance should make the Commission more effective and accountable to the neighborhood.

On November 2, 2006 the Cambridge Historical Commission held a public hearing to review the recommendations of the Study Committee. The Commission voted unanimously to adopt the procedural recommendations set forth in the report, to endorse the recommendations of the Study Committee, and to forward the Committee's Final Report to the City Council.

The Historical Commission also suggested that both the proposed amendments to the enabling ordinance, Ch. 2.78, Article III of the City Code, and the proposed amendments to the Order establishing the Avon Hill Neighborhood Conservation District be referred to the Ordinance Committee.

# Project Area



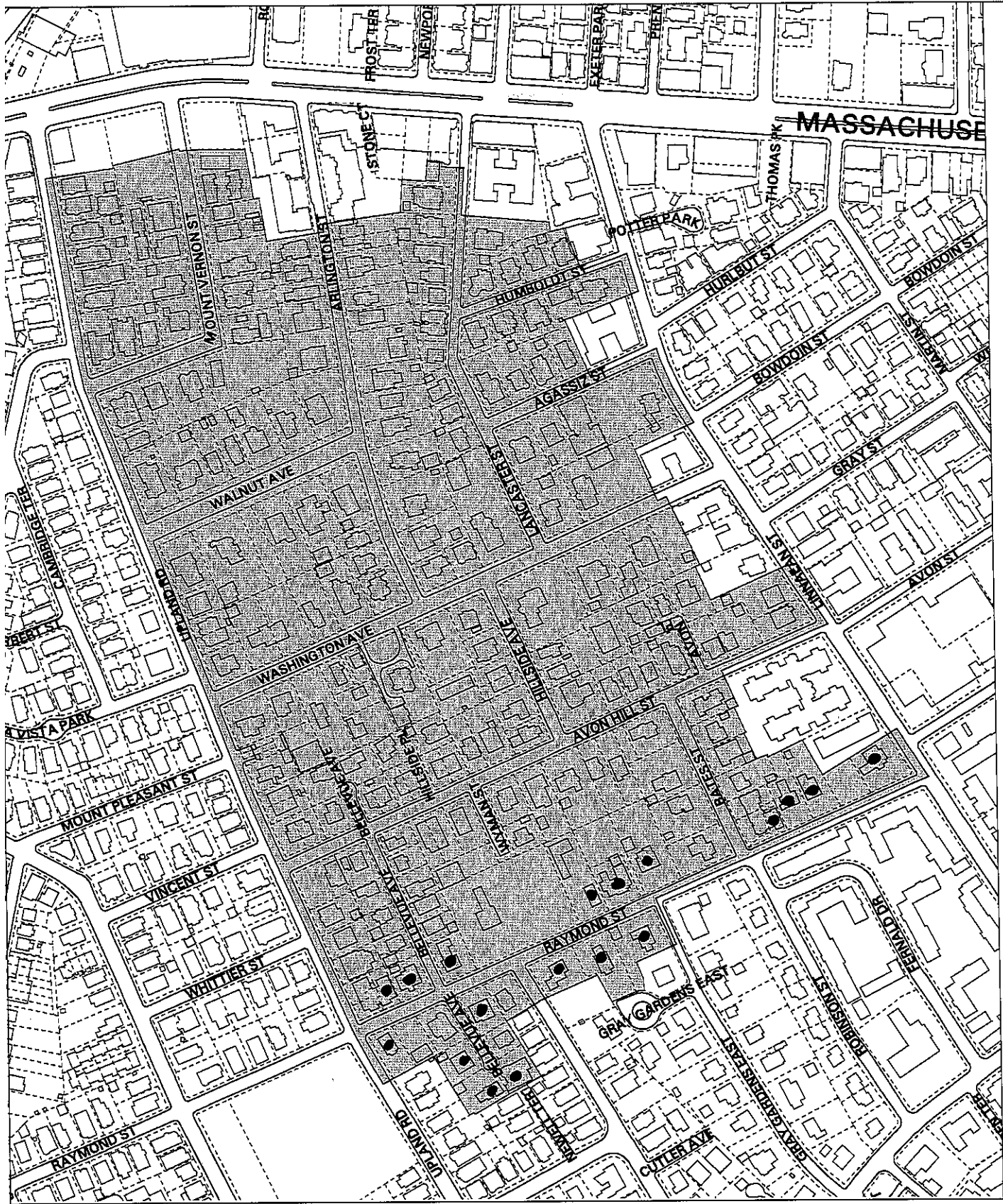
## Legend

- Avon Hill district
- Building Footprint
- Major Roads
- Parcel Line
- Petitioners

Cambridge Historical Commission

Cambridge GIS

831 Mass. Ave.  
Cambridge, MA



300 0 300 Feet



Scale 1:3600

## Avon Hill Neighborhood Conservation District

Cambridge, Massachusetts

Adopted as per order of the  
Cambridge City Council  
June 15, 1998



## **Avon Hill Neighborhood Conservation District Boundary Study Report**

### **Summary**

### **Map**

### **Proposed Amendments to the Order Establishing the Avon Hill Neighborhood Conservation District (see Appendix H)**

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## **I. Avon Hill Neighborhood Conservation District Boundary Study**

The Avon Hill Neighborhood Conservation District Boundary Study originated with petitions from 18 property owners on Raymond Street seeking to have the boundaries of the district redrawn to exclude their properties. The Cambridge Historical Commission (CHC) accepted the petitions at a hearing on August 4, 2005 and requested the City Manager to appoint a Study Committee consisting of three members of the Commission and four representatives of the neighborhood. The CHC charged the committee with examining not only the petitioners' request for a boundary adjustment but also the issues that gave rise to the petition, including matters of jurisdiction, governance, and department of the Avon Hill Neighborhood Conservation District Commission. The study committee appointed by the City Manager on November 9, 2005 met thirteen times by mid-July, 2006 to take public testimony and formulate recommendations.

### **A. Petitions to Amend the Neighborhood Conservation District Boundary**

On May 23, 2005, the Cambridge Historical Commission received separate petitions from eighteen individual property owners on Raymond and Linnaean Streets, West Bellevue Avenue, and Gray Gardens East, seeking removal of their properties from the Avon Hill Neighborhood Conservation District (NCD). The petitions were submitted to the Election Commission for verification of signatures by ten registered voters on May 27, 2005.

Although the Election Commission was initially able to validate only one of the eighteen petitions as containing the necessary ten signatures, a hearing was scheduled for the Historical Commission's June 30 meeting. At the request of that petitioner, Rafael Cavallaro of 106 Raymond Street, the hearing was continued until the August 4 meeting of the Commission. In the meantime, the other petitioners were notified that their petitions were deficient, and all subsequently obtained the necessary signatures. Notification of the public hearing on August 4, 2005 was mailed to all property owners in the Avon Hill Neighborhood Conservation District on July 20, 2005.

Valid petitions for removal from the Avon Hill NCD were received from:

John and Julia Bagalay, 15 Raymond Street  
Bjorg Bergveinsdottir and Eggert Dagbjartsson, 47 Raymond Street  
Rafael Cavallaro and Hemmie Chang, 106 Raymond Street  
Kenneth and Susan Dawson, 87 Raymond Street  
Byron and Mary-Jo Good, 77 Raymond Street  
Nelson Gore, 60 Raymond Street

Theresa Hamacher, 95 Raymond Street  
 Sabine Iatridou and Constantinos Marinos, 1 Gray Gardens East  
 Sarah B. Jolliffe, 72 Raymond Street  
 Morton and Phyllis Keller, 29 Raymond Street  
 Edward and Kathryn Kravitz, 5 West Bellevue Avenue  
 Robert Maginn, 90 Raymond Street  
 Harvey and Delba Mansfield, 27 Raymond Street  
 Clifford B. Moller, 55 Raymond Street  
 Steve and Pat Moore, 10 West Bellevue Avenue  
 David Smith and Sandra Sweetnam, 9 West Bellevue Avenue  
 Salim Valimahomed and Maurisse Gray, 49 Linnaean Street  
 Janet W. Walker, 103 Raymond Street

Properties petitioned for removal are marked with a dot on the map at the beginning of this report.

Although the petitions did not state any particular grievance, the Commission took one petitioner's concerns to be representative. Theresa Hamacher of 95 Raymond Street informed the Commission that she had appeared before the Avon Hill NCD Commission three times. She questioned the cost-benefit advantages of the neighborhood conservation district in the context of strict zoning rules, claimed that the commission made decisions on aesthetic rather than objective grounds, stated that there was no practical recourse from commission decisions, and complained about inappropriate behavior on the part of commission members.<sup>1</sup>

The staff noted that Ms. Hamacher's complaint suggested several areas in which a study of the boundaries could provide a focus for examining broader issues that appeared to underlie the Raymond Street petitioners' actions. The non-binding provisions of the order could be analyzed to determine their effectiveness and whether there were advantages to be achieved by shifting or refocusing those provisions. A study would elucidate whether additional public information, commission training or guidance, development of policy standards, or refinements to existing procedures would enhance communication and clarify respective roles. Finally, a boundary study would provide the opportunity for considering the potential benefits of consolidation of the Avon Hill NCD with the adjacent Lower Common neighborhood, which was concurrently under study as a possible NCD.

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<sup>1</sup> See Appendix G: Theresa Hamacher's letter of July 26, 2005

Although public testimony was strongly weighted toward limiting the scope of the inquiry to the petitioners' simple request to be excluded from the district, the CHC supported the staff recommendations and voted unanimously to

accept the petitions, ask the City Manager to appoint the study committee with representatives from the NCD Commission and the petitioners, and direct the committee to consider the boundaries and other possible amendments to the order or governance issues and the potential for combination with the Lower Common study area (Minutes of the Cambridge Historical Commission Meeting of August 4, 2005).

B. Required Process to Amend the Boundaries of a Neighborhood Conservation District  
The process for amending a district boundary or governance is the same as for designation, and requires the appointment of a study committee, a public hearing, and transmittal of a recommendation to the City Council. Designation, amendment or rescission of a neighborhood conservation district is governed by the terms of Article III, chapter 2.78.180 of the Cambridge City Code, as follows (rearranged and edited for clarity):

“Any ten registered voters of the City may petition that the Historical Commission initiate, or the Historical Commission on its own may initiate, the process of designating a ... neighborhood conservation district or amending or rescinding any such designation theretofore made. The Commission shall within forty-five days following the filing of such request or petition hold a preliminary hearing and arrange for the preparation of a report [on the historical, architectural and other relevant significance thereof] and ... request the appointment of a study committee. (2.78.180.D).

“In the case of a neighborhood conservation district, the report shall be prepared by a study committee consisting of three members or alternates of the Historical Commission and four persons appointed by the City Manager, including at least one person who resides in the district under consideration, at least one person who owns property in the district under consideration, and one person who owns property or resides elsewhere in the City and has demonstrated knowledge and concern for conservation and enhancement of those exterior features of the City which are important to its distinctive character (2.78.180 C).

“The report shall recommend the boundaries of any proposed ... neighborhood conservation district and shall recommend for incorporation in the order of the City Council designating each ... neighborhood conservation district general and/or specific standards and appropriate criteria consistent with the purposes of this article ... (2.78.180.B).

“No later than forty-five days after the transmittal of a report to the Commission pertaining to a proposed designation, the Commission shall hold a public

hearing. The Commission shall give not less than fourteen days notice of such public hearing by publication in a newspaper of general circulation in the City and by mailing notice thereof to ... every owner ... within the proposed neighborhood conservation district... (2.78.180.D)

“The recommendation of the Historical Commission with regard to any designation, amendment or rescission shall be transmitted to the City Manager and to the City Clerk with a copy of the approved designation report. Designation of ... a neighborhood conservation district or amendment or rescission of designation shall be by order of the City Council. (2.78.180.F).”

### C. Appointment of the Study Committee

Beginning on August 10, the CHC staff wrote to neighborhood property owners and interviewed candidates for appointment to the study committee. On November 9, 2005 the City Manager appointed the following study committee comprised of three CHC members, including its chair, a member who was a resident of the district, and a member who was also a member of the Avon Hill NCD Commission. Neighborhood representatives included two residents of Raymond Street, one of whom was a petitioner, a former member of the Avon Hill Commission, and a current member of the Commission:

Arthur Bardige, 98 Raymond Street  
 Robert Crocker, 120 Avon Hill Street (CHC member)  
 Theresa Hamacher, 95 Raymond Street  
 Bruce Irving, 32C Cushing Street (CHC member)  
 William King, 25 Hurlbut Street (CHC member)  
 Heli Meltsner, 74 Avon Hill Street (AHNCD member)  
 Jacqueline Olds, 30 Hillside Avenue

### D. Activities of the Study Committee

The study committee first met on November 21, 2005, and elected Arthur Bardige and Theresa Hamacher as co-chairs. The committee established a schedule of meeting every two weeks to complete its study by August 2006, and met thirteen times by mid-July 2006 to take public testimony and formulate recommendations. Most meetings occurred at St. Peter's Church on Concord Avenue, a few blocks away from Raymond Street.

By December 9, 2005, the committee had prepared a survey that the staff sent to the approximately 300 property owners in the district. In January, the committee began taking public comment, and soon began to debate the three main topics of its charge: the boundary; the commission's jurisdiction; and governance issues.

Fifty-seven respondents eventually returned the mission survey. The respondents most highly valued the district's green spaces (91%) and distinctive architecture (89%), followed by its pedestrian orientation (83%), its significant National Register properties (49%), its diversity of design (43%), and the evolution of its buildings through alterations (25%). They found the possibility of subdivision and new construction most troubling (92%), followed by large additions (82%), lesser alterations (20%), and small additions (16%).

Asked about their experiences with the commission, 60% of the respondents said that they had attended a hearing, and 40% had applied for approval of a project. A majority said that the standards were not clear or consistently applied, and a large minority said that the commission had not conducted hearings in a fair or civil manner. On the other hand, majorities agreed that the commission had preserved the neighborhood's character, accommodated change, and provided a positive forum for neighborhood dialogue.

Comments received from the public as part of the survey or presented during meetings covered the range of topics before the committee. At least a few of the petitioners attended every meeting to press their request to be excluded from the district, and their legal and architectural representatives submitted studies of the character and development patterns of Raymond Street (see Appendices). Opinion was divided on matters of jurisdiction, with some members of the public supporting the non-binding review and others opposing it. The committee also learned that there is considerable confusion over the jurisdiction and purpose of the District. For example, many residents erroneously believed that the Commission had control over the cutting down of mature trees and over the installation of all fencing.

There were numerous and strongly-worded calls for more civility and impartiality in commission proceedings, and for commissioners to act less arbitrarily, to follow guidelines and avoid personal comments, and to state the factual basis of recommendations. The range of written comments extended from the respondent who termed the Commission "thoughtful, knowledgeable and helpful" to another who reported that "the commission members, in my case, were largely concerned with personal biases, and ... many members were rude and abusive in their behavior toward both petitioners and the general public" (see Appendix F for all the survey comments received).



## **II. History of the Avon Hill Neighborhood Conservation District**

The Study Committee began its deliberations with presentations by the staff on the theory and practice of neighborhood conservation district commissions and the origins and practices of the Avon Hill Neighborhood Conservation District. These presentations are summarized below.

### **A. Establishment of the District**

Avon Hill has been the focus of preservation activities for at least twenty years. The first effort to establish a preservation district on the hill occurred in 1985, when ten registered voters petitioned the Cambridge Historical Commission to study an Avon Hill neighborhood conservation district. A study committee met several times and held informational meetings for the neighborhood. Because of the general lack of support, the matter was not pursued and the committee disbanded without making a recommendation.

About ten years later, a controversy arose surrounding the development of the property at 33 Linnaean Street, which contained a single-family Mansard cottage in a C2 zone, which carried an 85' height limit and a minimum dwelling unit size of only 600 square feet, allowing for very high density. The developer's proposal to relocate the house and construct townhouses on the remainder of the property demonstrated that additional development in the neighborhood was likely. An informal group of interested residents concerned about the impact of additional development began to examine the possible benefits of a neighborhood conservation district.

The second Avon Hill NCD study began early in 1997, when a group of residents gathered to discuss the benefits of a district with the Historical Commission staff. Subsequently, the staff met informally on four occasions with an ad hoc neighborhood planning committee of 12-15 interested property owners. During those meetings, a preliminary study area was identified as a basis to petition the Cambridge Historical Commission for an Avon Hill NCD study.

The preliminary study area boundaries were drawn based on 1) the zoning of the area, which reflected the historical pattern of single-family residential development, 2) an informal neighborhood poll which the ad hoc committee had conducted over the winter of 1997, and 3) the logistical difficulties that had prevented the committee from thoroughly polling prop-

erty owners in condominium buildings. The preliminary boundaries included all of the properties in the A2, B, and C1 zones in an area bounded by Linnaean Street, Raymond Street, Upland Road, and extending to the Massachusetts Avenue commercial area (zoned BA2).

Raymond Street, the area currently at issue, was described as follows:

Raymond Street is one of the oldest roads in Cambridge and originally served as one of the town's thoroughfares to the Great Swamp, the low-lying area between Fresh Pond and Alewife Brook. It extends northwest off Linnaean Street, once the northern boundary of Cambridge Common, rising up along the western edge of the hill that dominates the neighborhood. The oldest house on the street is 87 Raymond Street (1846), built for George Wyatt, a brick maker.

All of the apartment buildings in the C2 zone along Linnaean Street, which were considered incompatible with the historic uses and architectural scale of the remaining neighborhood, were excluded from the study area. It was felt that the large number of units in condominium ownership in these buildings might impede a survey of owner interest in the proposal. In addition, a significant degree of control over exterior alterations to those buildings was already exercised through the condominium associations. The property at 33 Linnaean Street (C2) was excluded despite its architectural consistency because the Historical Commission expected to be given a preservation easement on the property. Another C2 property, the historic Cooper-Frost-Austin House owned by the Society for the Preservation of New England Antiquities, was included because of its significance as the oldest residence in the neighborhood. The committee decided not to include the south side of Linnaean, despite interest from some property owners, because the arterial nature of the street created a significant boundary. Both sides of Raymond Street were included in the initial study, but only the south side of Upland Road.

An informational meeting to present the neighborhood conservation district concept and preliminary boundaries was held in May 1997. The Historical Commission subsequently received petitions from 52 registered voters requesting it to initiate a study for an Avon Hill NCD. The Commission also received ten letters supporting the petitions and four letters in opposition. In October 1997, the Commission voted to accept the petitions, and in November the City Manager appointed an Avon Hill NCD Study Committee.

The second Avon Hill NCD Study Committee began meeting in January 1998. Its first tasks were to identify the allowable parameters for development on Avon Hill, to com-



pare these with the existing conditions in the neighborhood, and to assess how zoning either aided or hindered the general goal of conserving neighborhood character.

The Committee first assessed the existing zoning and analyzed the potential for further build-out of underdeveloped property. The study area consisted of 222 properties in three zoning districts: a large area zoned A2, with 125 properties (56%), another with 70 properties zoned B (31%) and a small area with 27 properties zoned C1 (12%). In the most-restrictive A2 zone, 45% of the parcels were found to be at or below their allowable Floor Area Ratio (FAR), meaning there was additional development potential on those lots "as-of-right," or without issuance of a variance (assuming dimensional requirements such as setbacks could be met). The remaining 54% of the A2 parcels were currently above their maximum allowable FAR, meaning any additional development on those sites would require a variance.

In the B zone, which allows two-family houses and townhouses by special permit, a much smaller percentage of parcels (16%) could absorb additional building square footage as-of-right. Most of the B-zoned parcels (83%) would be subject to a variance proceeding if an owner proposed to construct additional square footage on the site. In the higher density C1 zone, just under half of the parcels (44%) were built out to their maximum allowable floor area; these include several condominium developments of the early 1990s. Of the remaining parcels, 55% were found to be capable of receiving additional square footage as-of-right; and one 18,000 square foot lot used only a third of its allowable floor area. Of the total number of parcels in the Avon Hill NCD Study Area, 38% were below their maximum allowable floor area. The Study Committee concluded that a substantial amount of additional square footage could have been added to existing parcels in the neighborhood as-of-right.

The Committee also examined the potential for additional accessory apartments. They identified 62 properties (49%) in the A2 zone that met the zoning criteria (i.e., pre-1940 dwellings with gross floor area of more than 3500 square feet and lot square footage of more than 6000 square feet, or at least 3000 square feet of lot area per dwelling unit). Their analysis demonstrated a significant capacity for accessory apartment development that could affect almost half of the properties in the A2 zone.

Another study of neighborhood character involved an analysis of lot coverage and accessory buildings. The spacious siting of Avon Hill dwellings was perceived as a critical

element of the neighborhood's character. One potential threat to the existing open space in the study area was seen to be the construction of accessory structures (defined as buildings that are subordinate to, but on the same lot as, the main or principal building) that would not legally constitute floor area. The major example of such an accessory building is a garage, since floor area did not then include areas used for parking, accessory parking, or off-street loading. While accessory buildings must meet the dimensional requirements of their zone for setbacks, height, etc., the volume of an accessory building was not calculated as part of the allowable floor area on the lot.

Finally, the Committee studied the potential for subdivision of existing lots. In the A2 zone, 23 properties contained over 12,000 square feet and would meet the 6,000 minimum required lot size for two lots; at least some of these 23 properties would have met the required 80' frontage and other dimensional conditions of the zone. Four properties in the B zone and four properties in C1 exceeded 10,000 square feet in area, double the required 5,000 square foot minimum lot size.

The Committee also conducted field studies of conditions that might adversely affect the character of Avon Hill and indicated four major categories of alteration: infill construction (free-standing new construction in side or rear yards, or on the site of historic buildings removed through demolition or disaster); additions to existing structures; fencing; and front-yard parking.

Residents voiced concern over the potentially negative impacts of infill construction on the neighborhood, the capacity for which was demonstrated in the committee's study of the zoning status of the study area. However, the Committee's field observations demonstrated a range of possible approaches to infill, most of which have been largely successful in the study area to date. Some examples included 9 Washington Avenue (ca. 1980), a 7-unit condominium in a side yard; 7 Humboldt Street (ca. 1950) on the site of the carriage house for 11 Linnaean Street; and 85, 87, and 89 Washington Avenue (1940), constructed on the site of a large suburban mansion, which had burned. Another form of infill construction was the conversion of carriage houses, such as at 5 Lancaster Street (1889), the carriage house for 1776 Massachusetts Avenue, converted in 1964, and 30-32 Lancaster Street (1886), the carriage house for 36 Lancaster Street, converted in 1978.

Additions to existing structures were found to constitute another major form of alteration in the study area. The Committee judged that some smaller additions, such as the stair-tower at 12 Humboldt Street (1885, and ca. 1965), while inconsistent architecturally, did not compete with the massing of the original house, but others had had a greater effect. These included 27 Agassiz Street (1889, 1996), where a large octagonal pavilion at the rear was constructed; 30 Agassiz Street (1890), where a large stair-tower and bay were added for an accessory apartment in 1983; and 15 Arlington Street, where a large one-story addition in the front yard disrupted the setback pattern of the street. These changes, often at the side or rear where they might be supposed to have minimal impact, in fact, were frequently quite visible from public ways. Many large lots create views through to other streets, and the Committee found that additions had impacts that extend beyond the street face of a particular building.

Many blocks in the study area are crossed at relatively frequent intervals by intersecting streets: examples include Raymond and Avon Hill streets, and Washington Avenue. This "short block" pattern, where side and back yards may be comparatively open to the public, resulted in the construction of fences at corner locations and along front property lines as owners sought to establish greater privacy. The Committee recognized that many of the neighborhood's fences reflected justifiable efforts on the part of owners whose property was open to view along more than one public way. However, the committee also noted the effect of solid and/or tall fences creating a secondary mass along the public way, substantially altering the historic character and diminishing the pedestrian experience of the neighborhood. The Committee likened tall, solid fences between the principal front or side wall planes of a building and the street to the walls of a structure and cited the importance of the pedestrian experience of the neighborhood. Noting the consistency of 15-20' or greater front and side setback planes in the study area, the presence of setback requirements in many of the original deeds subdividing the neighborhood, and the clarity of the zoning ordinance on required setbacks, the Study Committee supported a procedure to guide the construction of new fences so that they would not further diminish the visual openness of the neighborhood.

The Committee found it difficult to reach a consensus on front yard parking:

The Study Committee reached no consensus on whether front yard parking should be discouraged or encouraged. By eliminating the traditional driveway and rear garage, front yard parking does conserve back yard and open space, but it also interposes the structure of paving and automobiles in historically-

open front setbacks. There was consensus that front yard parking caused streetscape alterations whose design impact could be positive, neutral, or negative and that it should be reviewed in a conservation district to ensure its appropriateness (Avon Hill Neighborhood Conservation District Final Study Report, June 5, 1998).

The boundaries proposed for the Avon Hill Neighborhood Conservation District were the same as the original boundaries proposed for the study, with the exception of the property on the southwest corner of Raymond Street, 2 Gray Gardens East (map 207, parcel 67), which was removed from the proposed conservation district with the following justification:

The property, constructed in 1930, is principally oriented to Gray Gardens East and historically related to the subdivision of Gray Gardens East and West by the Garden Street Trust after 1922. Although contiguous to the Raymond Street boundary of the study area, it is architecturally and historically associated with a different group of properties. The strong and consistent objections of the owners to their inclusion in the study have been clearly stated from its outset; it was the Study Committee's recommendation that the final boundaries exclude the property, with the understanding that its removal did not compromise the integrity of the study area boundary as a whole (Ibid.).

#### B. Jurisdiction

Following a positive recommendation from the second Avon Hill NCD Study Committee and the Cambridge Historical Commission, the City Council adopted an Order establishing the Avon Hill Neighborhood Conservation District on June 15, 1998. The Order stated the goals and rationale for the district:

The Avon Hill neighborhood is characterized by 19th and early 20th century residences of significant architectural quality sited in a cohesive pedestrian-oriented neighborhood of pleasant streetscapes with little automobile traffic, abundant mature trees and plantings, and vistas through to surrounding properties. The Avon Hill neighborhood contains National Register-listed properties of city-wide significance and is marked by the diversity of its turn-of-the-century architectural design and by the evolution of that architecture as subsequent owners have updated properties. The generous size of the neighborhood's lots and buildings contains substantial scope for subdivision, new construction, and additions which could alter or diminish the qualities and characteristics that render the neighborhood an attractive and desirable place in which to live. It is therefore recommended that an Avon Hill Neighborhood Conservation District be established for the following purposes:

The purpose of the Avon Hill Neighborhood Conservation District ... is to preserve, conserve and protect the beauty and heritage of the District's architecture and landscape, to improve the quality of its environment, to establish a process for accommodating changes to properties in the District, to ensure that

additions and alterations to properties are compatible with the character of the District, to offer a forum for neighborhood dialogue about changes to properties in the District, to provide technical assistance to District property owners on issues of conservation and preservation, to foster wider public appreciation of the District, and to promote the public welfare by making the District a more attractive and desirable place in which to live.

The Avon Hill Study Committee also drafted a “Statement of Principles, Standards, and Guidelines for Review” that was included in Section VI of the proposed order. The Principles reflected “the Committee’s finding that there is legitimate capacity for additional development on many properties in the study area and that the evolution of the area’s historic buildings as owners update their homes is not a process that should be halted; rather, it is the Committee’s goal to establish, in the NCD, a process for neighborhood dialogue and consensus decision-making that will ensure that the changes which do occur happen in a manner that supports and augments Avon Hill’s architectural and historical character.” The “General Conservation Standards” established broad goals for the Avon Hill NCD. These were to:

1. Conserve the historic development patterns of the neighborhood, including its green space, open vistas, generous setbacks, and predominately low-density lot coverage;
2. Enhance the pedestrian’s visual enjoyment of the neighborhood’s buildings, landscapes, and structures;
3. Protect structures listed on or determined eligible for listing on the National Register of Historic Places;
4. Encourage the preservation of the neighborhood’s buildings, landscapes, and structures; and
5. Maintain the diversity of the neighborhood’s architectural styles.

The review authority of the district was structured as a two-tiered system of binding and non-binding (advisory) reviews based on the nature of the project and the significance of the structure affected by that project. The Avon Hill Order provided for binding reviews over all major alterations, new construction, and demolition that would affect publicly visible exterior architectural features of structures in the district. Property owners subject to binding review are required to apply to the Commission for a Certificate of Appropriateness or Hardship before undertaking work. The Commission convenes a public hearing to review the application, abutters’ comments are solicited, and the owners are obligated to follow the commission’s determination.

Activities subject to binding review include:

1. Construction of a new building, as defined in the zoning ordinance then in effect;
2. Construction of an accessory building, as defined in the zoning ordinance then in effect;
3. Construction of a parking lot as a principal use;
4. Construction of an addition to an existing structure that would increase its gross floor area by more than 750 square feet in the A-2 zone or more than 500 square feet in the B and C-1 zones;
5. Construction of an addition to an existing structure that would increase the total lot coverage on the property to 30% or more in the A-2 zone or to 40% or more in the B and C-1 zones;
6. Demolition of an existing structure not originally used to garage automobiles if a demolition permit is required;
7. Alteration of the exterior architectural features of a building listed on or determined eligible for listing on the National Register of Historic Places;
8. Alteration of the exterior architectural features of a structure that requires a variance or special permit under the zoning ordinance then in effect; or
9. Alteration of the exterior architectural features of a publicly-owned structure or of a structure containing a use established or continued by variance or special permit, or proposed to contain or continue a use that would require a variance or special permit under the zoning ordinance then in effect.

For National Register properties, only alterations proposed to the exterior architectural features of the structures on these properties that are visible from a public way are subject to binding review; alterations to other aspects of the properties are exempted or treated as non-binding reviews. In binding cases, the Commission may impose dimensional and setback requirements in addition to those required by applicable provision of the zoning ordinance. In non-binding cases, owners are required to apply for a certificate from the commission before undertaking any construction or alteration of a publicly visible exterior architectural feature of a structure. In non-binding cases, a meeting of the commission is convened and abutters are notified, but the owner is not obligated to follow the commission's recommendations.

The 1997 Study Committee initially recommended that parking between the principal front wall plane of a building, or between the principal front and side wall planes of a building that occupies a corner property, should be subject to binding review. Similarly, construction of a wall or fence more than four feet high (as measured from the sidewalk or the existing immediately adjacent grade) between the street and the principal front wall plane of a building, or the principal front and side wall planes of a building that occupies a corner property, would be subject to the Commission's binding review. Elsewhere on a property, a pro-

posals to construct a fence or wall more than six feet high would trigger a non-binding review. However, both of these categories were reduced to non-binding or advisory level review following the public comment phase of the study. Many owners indicated that additional discretion should be allowed in these instances. The Study Committee concurred, but also found that the potential design impacts of front yard parking and tall fences warranted the opportunity for dialogue among neighbors that the advisory level of review offered.

The following activities are exempt from Commission review:

1. The alteration of exterior architectural features on the premises of a property in the District in a manner that does not increase or diminish the existing building envelope and that does not require the removal, enclosure, or addition of any cornice, fascia, soffit, bay, porch, hood, cornerboard, window sash, window or door casing, or any other decorative element, including historic shingled siding, wood or copper gutters and downspouts, and copper, slate, or wood shingle roofing, and that does not alter the shape of a roof.
2. The construction of terraces, walks, driveways, sidewalks, and similar structures that do not involve a change in grade level and that are not to be used for parking between the principal front wall plane of a building, or the principal front and side wall planes of a building that occupies a corner property, and the street.
3. The construction of walls and fences less than four feet high as measured from the sidewalk or existing immediately adjacent grade and located between the principal front wall plane of a building, or the principal front and side walls of a building that occupies a corner property, and the street. The construction of walls and fences less than six feet high elsewhere on the property are not subject to review.
4. Signs, temporary structures, lawn statuary, or recreational equipment, subject to such conditions as duration of use, dimension, location, lighting, removal and similar matters as the Commission may reasonably specify.
5. Storm doors and windows, screens, and window air conditioners.

#### C. Operations of the Avon Hill Neighborhood Conservation District Commission

The Cambridge City Council voted unanimously to designate the Avon Hill Neighborhood Conservation District on June 15, 1998. Pending the appointment of an NCD commission, the Cambridge Historical Commission reviewed 27 cases, nine of which required review at a public hearing.

The Avon Hill NCD Commission was appointed on November 30, 1998 and held its first meeting on December 17, 1998 and its first hearing on January 6, 1999. Over the next three years the Commission conducted 36 public hearings on applications for Certificate of

Appropriateness or Hardship. The staff issued 58 additional Certificates of Non-Applicability for work that did not require a public hearing. At the end of this period, pursuant to a review provision of the 1998 Order designating the District, the NCD Commission prepared an analysis of its caseload and made recommendations for the continued operation of the District.

Between June 1998 and November 2000, 63% of the applications received were immediately issued Certificates of Non-applicability by the staff because the work proposed did not require review at a public hearing. Such work included interior renovations, ordinary repairs and maintenance replicating existing materials and design, or work that was not visible from a public way.

The remaining 37% of the applications required a public hearing. Of these, most were subject to binding review. This reflected the fact that many of the properties were located in the Avon Hill National Register District, where all alterations are monitored with binding review. Outside the National Register district, the criterion for binding review is less strict, and alterations that involve modest architectural changes or square footage additions below certain size limits are subject only to non-binding review.

During this early period the Commission issued non-binding denials for two proposals, and one binding proposal was withdrawn prior to likely denial. In the latter case, AH-60, 15 Raymond Street, the Commission determined that a proposal (considered binding because it required a variance) to construct a two-car garage in the front setback area of the house would not meet the conservation guidelines of the designation Order to conserve open space, discourage front yard parking, and maintain vistas into sites. The applicant withdrew the application after a Commission member made a motion to deny it.

In the non-binding cases, the Commission found that the proposals did not meet the conservation guidelines of the order or were inappropriate modifications of original architectural features. In both instances, the Commission heard from abutters concerned about the impact of these proposals. In the first case (AH-41, 29 Raymond Street), the Commission denied as inappropriate the installation of one-over-one vinyl replacement sash and the removal of the original wooden windows, which included a variety of sash patterns and contributed significantly to the character of the 1905 Tudor Revival rowhouse. A primary con-



cern, both for the Commission and the other owners in the three-unit row, was the visual inconsistency of the replacements with the remaining original windows.

In the second non-binding case, the proposal (AH-43, 60 Raymond Street) involved modification of an earlier-approved proposal (AH-17) to enlarge a two-car garage. The earlier proposal was to remove a stockade fence from the property and create an enlarged paving and garage area using the existing curb cut, all to be screened behind a retaining wall. This had been approved on the basis that it opened views of the property to the public and screened the additional parking, as the order intended. The second proposal eliminated several desirable features of the first proposal while enlarging the curb cut and leaving an expanse of parking open to view.

Denial of a non-binding application does not prevent applicants from pursuing their desired proposal. While the owners at 29 Raymond Street did not undertake the proposed window replacement, the owner at 60 Raymond Street did construct the garage, parking and fencing according the second plan he proposed, for which the Commission had denied a Certificate of Appropriateness.

The city-wide rezoning effort of February, 2001 may have increased the number of non-conforming properties in the District (particularly with regard to rear-yard setback requirements), contributing to an increase in the number of applications for zoning relief and, through the provisions of the Avon Hill NCD order for binding review over projects seeking zoning relief, increasing the number of projects subject to binding review.

Since the completion of the initial three-year review, covering the period through November 2000, several major controversies have defined the nature of the Commission's jurisdiction and the nature of the challenges that it has faced. These cases – binding determinations at 24 Bates Street and 15 Raymond Street, and non-binding determinations 47 Raymond Street - illustrate the difficulty that the commission had in striking a balance between its interpretation of the public interest and the interests of homeowners and their neighbors. The 47 Raymond case also illustrates the limitations and difficulties of non-binding review.

The controversy at 24 Bates Street (Cases AH 95 and 103) arose in 2001 from the owner's desire to construct an addition that some neighbors claimed would block their views and light and adversely change the character of the neighborhood. Negotiations with the Commission during an intense series of public hearings reduced the site coverage, eliminated

the garage, and lowered the height of the addition, but failed to assuage the abutters, who strongly urged the Commission to deny a Certificate of Appropriateness because the project would have an “adverse effect ... on surrounding properties, and the District as a whole.” After a year of hearings, the Commission granted the Certificate as requested on the grounds that the addition was not inconsistent with the character of the neighborhood or the original house. The owners received a variance from the Board of Zoning Appeal, but the abutters appealed to the Middlesex Superior Court, which stayed its decision until a parallel case was resolved in the owner’s favor by the Massachusetts Land Court that no variance was necessary. The addition was then built as proposed, comprising a 70% addition to the footprint of the original house. In this case the Avon Hill NCD Commission ruled in favor of development, siding with the homeowner against the strongly expressed desires of their neighbors to maintain the status quo.

Another controversial case arose at 15 Raymond Street, where the owners reapplied for a Certificate of Appropriateness to construct a two-car garage in their front yard setback (Case AH-143). The applicants claimed that the design and materials of the garage would be in keeping with the historical and architectural character and design of their house as well as other houses and accessory buildings in the District. The Commission denied the application on the basis that it was required to consider the siting and massing of the structure and its relationship to the surrounding structures as well as the design and materials of the new construction. The Commission considered the historic and architectural value and significance of the site and found that the garage would not be appropriate in size or shape either to the land area on which it would be situated or to the adjacent house. Further, it would not conserve the historic development patterns of the neighborhood, including its green space (in this case, the landscaped front yard), its open vistas (in this case, the pedestrian views of the house), its generous setbacks and the predominately low-density lot coverage. The Commission found that the proposed garage would diminish rather than enhance the pedestrian’s visual enjoyment of the neighborhood’s buildings, landscapes, and structures, and diminish the integrity of the house and its setting, thereby discouraging the preservation of that building and landscape (the Commission noted that an early one-car garage had been and was still located in the traditional location for such structures, at the rear corner on the property line in the back yard of the house).

In the fall of 2003 the owners appealed the NCD Commission's determination not to approve the construction of the garage to the Cambridge Historical Commission, but notice was received by the latter commission on a date which, after required public notice of its meeting agenda, would not have allowed that Commission to consider the appeal at its next regularly scheduled meeting, within the thirty-day period set forth in sentence # 3 of Section 2.78.240 of the City Code. When the owners-appellants declined to waive the thirty-day provision, the Historical Commission declined to review the NCD Commission proceedings; and the owners-appellants then availed themselves of the further appeal to the Superior Court afforded by sentence # 4 of Section 2.78.240. The Court upheld the determination of the Avon Hill Commission. The owners then filed a new application for a slightly modified garage, which the Avon Hill Commission also denied. The owners appealed that denial to the Historical Commission. However, in April 2005, before the appeal could be heard, the Historical Commission granted the owners' request for an indefinite continuance so that they could enter into proceedings before the Board of Zoning Appeal.

Finally, a continuing series of alterations at 47 Raymond Street (Case AH-181) have tested the utility of the non-binding provisions of the Avon Hill Order. In the course of a complete interior renovation and massive exterior site improvements, the owner applied for a binding Certificate of Appropriateness to raise the roofline on a side bay, and a non-binding certificate to remove the existing garage and construct a new underground garage with a ten-foot high retaining wall and terrace facing an abutter on Bates Street. The work subject to binding review was considered appropriate, but the site improvements generated intense opposition among the abutters. The staff found that the terrace formed by the construction of the underground garage was not a structure within the meaning of the Avon Hill Order and the lot coverage remained under 30%, and managed only to negotiate some cosmetic improvements. The abutters questioned whether the staff had made the correct interpretations about the Commission's jurisdiction, and remained deeply dissatisfied with the results of the Commission's review. The owners decided not to build the underground garage, but the project remained controversial, principally because of the construction of a granite wall surrounding the property.



### III. Recommendations of the Study Committee

The Study Committee organized its deliberations around the three charges voted by the Historical Commission when it accepted the petitions on August 4, 2005: the boundary; jurisdiction and governance issues; and the possibility of consolidating the Avon Hill district with the proposed Lower Common neighborhood conservation district.

#### A. Amendments to the Avon Hill NCD Boundaries

**Recommendation 1:** the Committee unanimously recommended that Raymond Street should remain in the District, and that the problems that Raymond Street petitioners and others have encountered are better dealt with through the jurisdiction and governance changes recommended below.

*Explanation:* The committee reviewed the enabling ordinance and noted that participation in a Neighborhood Conservation District is not voluntary; districts are established by order of City Council, and not by popular vote. However, the major goals of the District are broadly supported, according to the survey, although there was less agreement about secondary or minor goals.

The Committee unanimously concluded that no mistakes were made in drawing the original boundaries to include Raymond Street in the District, because

- the street played an important role in the history of the District;
- many houses on street are of historic and/or architectural interest; the street's architecture is compatible with rest of District; and
- the street has similar issues of concern regarding potential for development (compared to the rest of the District and to time of original study)

The Committee also considered whether individual properties on Raymond Street should be considered for exclusion. The Committee reviewed the situation of 49 Linnaean Street (at the corner of Raymond). This house is separated from the District by a parking lot of a multi-family building that is not in the District. However, the house is particularly important historically, so the Committee concluded that it should not be excluded.

A staff recommendation that three houses on Gray Gardens East - 1 Gray Gardens East and 60 and 72 Raymond Street – could be removed from the District provoked extended discussion, during which their owners all asked to be excluded. These houses were built as part of the 1922 Gray Gardens development, the bulk of which was not included in the 1998

NCD study (one Gray Gardens house on Raymond Street was excluded from the District at the last moment at the owner's request). On the other hand, both sides of the street are generally included when districts are formed. However, this rule was generally not followed in the case of the Avon Hill NCD, since the opposite sides of Linnaean, Upland and a portion of the west side of Raymond Street were not included.

#### B. Jurisdiction and Governance

The Committee reviewed the issues that gave rise to the petitioners' complaint, including matters of jurisdiction, governance, and deportment towards members of the public. Public testimony was taken on each of these issues.

##### 1. Purposes and Approach

**Recommendation 2:** Clarify the general purpose and approach of the District by amending the preamble of the Avon Hill NCD Order.

*Explanation:* The general intent of the proposed changes is to:

- clarify that the District seeks to guide change and balance the interests of the property owners and of the neighborhood,
- clarify the definitions and role of "green space" and "open vistas" and
- more clearly describe the treatment of National Register properties.

The Preamble, which describes the general purposes of the District, would be amended to offer guidance on the goals of the Commission. The definition of green spaces would be amplified by adding a definition of "open vistas." Amendments to Part VI, the Statement of Principles, Standards and Guidelines for Review, call for the Commission to guide change for consistency with the visual character of the neighborhood and balance the interests of homeowners with those of the District (see Appendix F for the recommended revisions to the Order).

*Amendment:* See Preamble (Part I), Definitions (II), Principles of Review (VI.A), and the General Conservation Standards (VI.B).

##### 2. Jurisdiction: Determinations of the Commission

The Committee seeks to simplify and clarify the Commission's jurisdiction, a) by ending the requirement that applicants for zoning relief must automatically apply for Commission review, and b) by eliminating the entire category of non-binding review by the Commission and transferring non-binding reviews to the staff. To balance this reduction in jurisdiction,

the Committee recommends adding binding review of certain alterations to buildings outside the National Register District, including installation of aluminum or vinyl siding and windows and irreversible alterations to bays, dormers, porches, and/or roofs that would be visible from a public way.

a. Zoning Trigger eliminated

**Recommendation 3:** The Committee supports eliminating the zoning trigger for binding review (leaving the square footage trigger unchanged).

*Explanation:* The provisions of the existing Order that trigger a binding review when a proposed change will require a variance or special permit under the zoning ordinance are administratively difficult, since it is not always clear which proposals will require a special permit or variance until the applicant applies for a building permit. Also, the nature of the zoning trigger is not directly related to the objectives of the conservation district. Finally, these provisions were incorporated into the order when the zoning ordinance was more permissive. Under the current, more restrictive zoning ordinance these provisions have triggered more reviews than originally intended.

*Amendment:* see Paragraph V.A.: binding determinations deleted

b. Binding review of aluminum and vinyl siding and/or windows

**Recommendation 4:** The Committee agreed that installation of aluminum or vinyl siding and aluminum, vinyl, or vinyl-clad windows where they currently do not exist has the potential for high adverse visual impact, and should be subject to binding review. The Committee also felt that this change would balance the elimination of non-binding reviews (see below).

*Amendment:* see Paragraph V.A.7: binding determinations

c. Binding review for major changes to the building envelope.

**Recommendation 5:** The Committee supports binding review for alterations that affect the building envelope, including altering, adding or removing of bays, dormers, roof shapes and porches.

*Explanation:* Alterations on the scale of adding or removing bays, dormers, or porches, or altering the shape of a roof, are irreversible for all practical purposes, and should not be per-

mitted without review to ensure that the proposed changes are appropriate for the building and the District.

*Amendment:* See Paragraph V.A.8: binding determinations.

d. Non-binding determinations

**Recommendation 6:** The Committee agreed that non-binding determinations should be eliminated and replaced with administrative reviews by the staff (though the homeowner may request a non-binding review before the Commission). The staff's role in these cases would be advisory only.

*Explanation:* Non-binding determinations play an important role in educating homeowners about preservation issues, but the formality of the process has added to the tensions between homeowners and the Commission. Administrative review would allow the staff to inform homeowners about relevant issues in a more informal process. While this is a unanimous recommendation, some members of the committee, as well as some members of the public, expressed concern that this may eliminate an opportunity for public input on proposed alterations.

*Amendment:* See Paragraph V.B: Non-binding Determinations.

e. Conservation guidelines

**Recommendation 7:** Change the guideline regarding total lot coverage to 35% in the A-2 zone and 45% in the B and C-1 zones (an increase from 30% and 40%, respectively).

*Explanation:* This change reflects the current zoning guidelines of maximum FAR of 0.50. Assuming a two-story building and a maximum FAR, the building alone would cover 25% of the lot. The proposed changes would allow 10% of the lot to be used for accessory buildings in the A-2 zone and 15% in the B and C-1 zones (where lots are generally smaller).

*Amendment:* See Paragraph V.A.5: binding determinations.

**Recommendation 8:** Add a conservation guideline for architectural features such as siding, trim and windows, clarifying that these features should generally be compatible with the architectural style of the building. Specifically state that vinyl siding and vinyl windows should not be used.



*Explanation:* This change clarifies the Commission's approach in these areas. Also, language on vinyl siding and vinyl windows seems appropriate given proposed binding reviews on these items.

*Amendment:* See Paragraph VIC: Conservation Guidelines for Avon Hill

Effect of Proposed Amendments on Binding and Non-binding Determinations: The staff conducted a study of all 46 applications that were made between January 2005 and June 2006 to compare the jurisdiction of the NCD Commission under its present criteria for binding review and the proposed new criteria for binding review (including the new triggers of vinyl windows or siding and changes to the building envelope such as alterations to porches, bays, or roofs). These new criteria were tested both in the instance of the changes being visible from any public way and in the instance of the changes only occurring on the front elevation.

A spreadsheet comparing the effects of the proposed new criteria on the commission's jurisdiction for each case is attached to this report as Appendix F. Under the existing criteria, 63% received a Certificate of Nonapplicability from the staff with no Commission hearing; 17% received a Certificate of Appropriateness after a binding review by the Commission; and 13% received a Certificate of Appropriateness after a non-binding review.<sup>2</sup> Of the 11 applications for binding Certificates of Appropriateness, 4 were triggered by an application for a zoning variance and 6 were National Register properties.

The effect of applying the new criteria (eliminating the zoning trigger and non-binding reviews, while adding reviews of aluminum and vinyl siding and windows and alterations that affect the building envelope) to the 2005-2006 caseload would be an increase of five new binding cases and a decrease of one non-binding case. All four of the cases that resulted from the zoning trigger would have still have come before the Commission because they involved additions or changes to a roof. There would be no change in jurisdiction in the remaining cases.

### 3. Commission membership

The Committee observed that the Avon Hill Commission had encountered significant resistance because of its relationship to the community. The small size of Avon Hill made it diffi-

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<sup>2</sup> Two applicants for Certificates of Appropriateness received Certificates of Hardship because a quorum was not present.

cult to attract new members; some members had remained in place since 1998; and the relatively informal style of the Commission's early years had become ingrained.

**Recommendation 9:** Allow two additional Cambridge homeowners living outside the District to serve on the Commission (one as a member, one as an alternate), with preference given to those who have served on other NCD commissions.

*Explanation:* Because Avon Hill is a small district, it can be difficult to recruit sufficient qualified members. This change would allow the Commission to draw from a larger pool of applicants.

*Background:* Avon Hill must comply with the City Ordinance regarding NCD Commission members. Of the five Commission members:

- At least three must be residents of the District (of which at least 2 must be homeowners)
- At least one must be a property owner in the District (who may or may not be a resident)
- One must serve on the Historical Commission,

Of the three alternates:

- All three must be property owners in the District.

In addition, the AHNCD Order recommends that one member/alternate have expertise in architecture or architectural history and that one member/alternate have expertise in landscape architecture. This is a departure from the City Ordinance, which requires that at least two members or alternates have "professional qualifications related to real estate or architecture or historic preservation".

*Amendment:* Ch. 2.78.160.A of the City Code. "One member and/or one alternate of a neighborhood conservation district commission (in addition to the mandated member of the Cambridge Historical Commission may be a Cambridge resident who lives outside the district."

**Recommendation 10:** The City should encourage residents of the District to nominate potential candidates for membership. All advertisements for applicants should encourage these nominations.

*Explanation:* This would be a simple way to help assure that commission members are representative of and supported by the community. Other proposed processes for achieving this end, such as election of commission members, do not appear feasible at this time.

*Implementation:* CHC staff adopts the appropriate procedure.

**Recommendation 11:** The provision of the Ordinance that Commission members are limited to two consecutive terms of service should be enforced, but individuals could be considered for reappointment after one year of retirement.

*Explanation:* This approach is consistent with best governance practices. The Ordinance calls for a term limit of a maximum of two 3-year terms, but those limits apply separately to service as member and service as alternate. On the AHNCD, there has not been a clear distinction between the duties of a member and those of an alternate, and alternates have sometimes been allowed to vote inappropriately. If term limits are enforced, alternates can be considered likely candidates for appointment as members. Institutional memory will be preserved, and turnover will be enhanced.

*Implementation:* This approach should be adopted as a policy and as standard administrative practice.

**Recommendation 12:** Recommend to the City Manager that he appoint a new commission after a broad solicitation for members and alternates among those who have not previously served.

*Explanation:* This is not a statement about the performance of any of the current members or of the Commission as a whole, but simply a wish to start fresh.

#### 4. Conduct and Accountability of the Commission

The Committee learned (and some members had observed from their own experience) that the Avon Hill Commission process had the reputation as an especially grueling and sometimes disagreeable experience for applicants and members of the public. This may have stemmed from the history of the commission, its relative isolation from other public bodies, or its relatively small caseload.

**Recommendation 13:** The Historical Commission should have clear responsibility for the oversight of NCDs. As part of this responsibility, the Historical Commission would hold a

periodic joint meeting with the Avon Hill NCD Commission to review the operations of the District over the preceding period and prepare a report for the City Manager and the City Council summarizing its principal findings. All homeowners in the District should receive notice of this meeting and be given the opportunity to comment.

*Explanation:* This change would create a clear line of authority and accountability and a regular forum for community feedback.

*Implementation:* CHC implements as an administrative measure.

**Recommendation 14:** The Avon Hill NCD Commission should continue to use the hearing procedures recently established.

*Explanation:* The current chair of the Avon Hill Commission has established the practice of reading a statement at the beginning of each meeting that explains the jurisdiction of the Commission and sets forth the procedures governing the conduct of the meeting. This innovation creates greater transparency for homeowners seeking approval of a project.

*Implementation:* AH NCDC formally adopts procedure.

**Recommendation 15:** The Historical Commission should increase training of Commission members and should consider establishing a Code of Conduct for Commissioners. The Code should specify that:

- Commission determinations should always be based on the guidelines of the Avon Hill NCD Order and the written determination should specify under which guideline the determination was decided.
- Commission members are exercising a quasi-judicial authority. They should use discretion when discussing cases and issues that may be presented to the Commission and should refrain from expressing personal opinions on these cases and issues, both inside and outside meetings.
- Commission members are encouraged to participate in community events that provide a forum for educating the public about preservation issues.
- When neighbors are in conflict, Commission members should try to help the community find points of agreement during meetings.

*Implementation:* CHC implements as an administrative measure.

**Recommendation 16:** The Historical Commission should consider increasing its public education efforts. To this end, the Commission should consider:

- Producing a regular newsletter for homeowners in NCDs.
- Sponsoring education activities for the District (possibly walks or lectures).
- Offering to meet with applicants to give them suggestions on preparing for an NCD meeting.
- Posting meeting minutes on its web site to further increase transparency.

*Implementation:* CHC implements as an administrative measure.

## 5. Recourse for homeowners

Appeals from decisions of a neighborhood conservation district commission are described in the City Code, Ch. 2.78.240:

[1] Any applicant aggrieved by a determination of a neighborhood conservation district commission or ten registered voters of the City opposing a determination ... may appeal to the Historical Commission within twenty days after the filing of the notice of such determination with the City Clerk. [2] The Historical Commission may overrule the determination and return it for reconsideration consistent with that finding. [3] If the applicant is aggrieved by the determination of the Historical Commission, or if the Historical Commission does not take action within thirty days of filing for review, the applicant may appeal to the superior court.

In the more than twenty years that Cambridge has had NCDs, only seven NCD Commission cases have been appealed, the first two in the Mid-Cambridge NCD, and in more recent years one each in the Marsh and Half Crown NCDs and three in the Avon Hill NCD (the latter cases are discussed in Part I). In all of the appeals that it has heard under Section 2.78.240 to date, the Historical Commission has consistently chosen not to weigh the evidence that had been presented to the local NCD Commission or to substitute its judgment for that of the local Commission in determining whether the project that was the subject of the appeal does, does not, or with stated conditions may, satisfy the criteria for the local NCD.

The Avon Hill NCD Boundary Study Committee asked itself whether there should be changes to the limited appeal provisions of Section 2.78.240 quoted above. William B. King, an attorney and chair of the CHC, prepared the following analysis:

“One possibility might be for the Historical Commission to expand its review of determinations by local NCD Commissions in effect to provide a *de novo* hearing on a case whose determination the owner and/or members of the public disagree. Such an expansion of the appellate role of the historical Commission could be accomplished either by the Commission's changing its practice on its own or by the City Council's amending Section 2.78.240 so as to require *de novo* consideration on the merits, either by the Historical Commission or possibly by some other City group. While this additional level of review might give comfort to

those who are concerned about what a commission of their nearby neighbors might decide and might be thought to provide for a more consistent city-wide standard of review, there are several problems with a de novo approach, among which are the potential lack of a consistent approach throughout the NCD by those most familiar with it and additional demands made upon staff and individuals who are Historical Commission members.

"One possible variant to a de novo hearing for those concerned about too parochial a view by one's nearby neighbors might be a city-wide NCD Commission (such as we understand is being considered for Brookline, Concord, Lincoln and perhaps other communities now actively studying the advantages of adding the NCD vehicle to their arsenal of conservation/preservation tools), with the one Commission applying the potentially differing guidelines for change in the separate NCDs.

"If Section 2.78.240 were to be changed to mandate de novo review, the change should clarify whether the Historical Commission (or other reviewing authority) itself has authority to issue a certificate in a case whose NCD Commission's determination it has overruled or, as seemingly limited by existing sentence #2 of the Section, merely return the case to the local Commission for "reconsideration consistent with" the Historical Commission's finding.

"Further, one can question the rationale behind existing Section 2.78.240 provisions for standing of persons, other than the owner, opposed to a determination by the NCD Commission to appeal an NCD determination. Why give standing (see sentence # 1 in such Section) to ten registered voters, who may live anywhere in the City, but not, say, to one abutting owner? Note that only the owner, not other opponents of an NCD Commission determination, have the further right under sentence # 2 of Section 2.78.240 to appeal to superior court if the Historical Commission fails to send back to the NCD Commission. Perhaps a better provision for standing would be to give the same right to appeal an NCD Commission determination only to those who would have standing to appeal a Board of Zoning Appeal determination with respect to the same property.

"General Laws Chapter 40C, the state law governing historical commissions, does provide an option for those communities which desire to have a procedure for appeals from decisions of the local historical commission short of a direct appeal to superior court. Section 12 provides that the local ordinance establishing the city's historical commission may provide that "any person aggrieved by a determination of the [historical] commission may ... file a written request ... for a review by a person or persons of competence and experience in such matters, [to be] designated by the regional planning agency of which the city ... is a member." The ordinance establishing the Cambridge Historical Commission does not, but could be amended to, include a review for persons aggrieved by a Historical Commission determination by a panel of one or more persons appointed by the Metropolitan Area Planning Council. Presumably the ordinance authorizing NCDs could be amended to include such a review, although it is not at all clear that the MAPC, an agency created by Massachusetts statute, would be obligated

or willing to designate such a panel pursuant to a local municipal ordinance as it is by state statute. Interestingly, the panel that has most often been appointed during the past several years by the MAPC to hear appeals from historical commission determinations in communities that do have this procedure (e.g. Braintree, Newton, Wellesley) have included two Cambridge residents (CHC Executive Director Charles Sullivan and municipal law specialist Joel Bard). Also interestingly, in light of the statute's silence as to the extent of the "review" that the panel is to undertake, this panel has limited its review to the procedural aspects of the reviewed historical commission determinations and to whether there is evidence in the record to support the determination, rather than to a de facto substantive review, and has more often than not upheld the local commission's determination. (Charles Sullivan has stated, however, that in the debriefing that sometimes follows these panels' review, informal discussion by members of the panel with the appellant and members of the local commission have occasionally led to a modified compromise result that satisfied all participants.)

"This leads to the question of whether there may be some form of institutionalized mediation or arbitration that might be practicable when an applicant or some member of the public with appropriate standing is aggrieved by a determination of a local NCD commission. Experience of members of some Cambridge commissions (NCD and Historical) is that discussion at the public hearing on a problematic project often does constitute mediation, as members of the commission ask the owner-applicant for, and sometimes themselves make, suggestions for changes that might both accommodate the applicant's objective while meeting the criteria for the NCD. (Sometimes this de facto mediation may require or be facilitated by tabling consideration of the project to a future meeting, which may require the applicant to waive the 45-day ordinance time period within which the commission must act.) Perhaps the Historical Commission staffer attending the meeting could in appropriate cases initiate discussion of whether there may be possible acceptable alternatives if the commission chair or some other member does not. It would clearly require a significant change in the City ordinances, with potential implications well beyond the NCD process, to require binding mediation (which would still ultimately require a majority decision by the NCD commission to resolve the case) or binding arbitration (which would substitute the arbitrator for the commission in making the ultimate decision on the case) with respect to individual cases.

"My personal opinion is that it is preferable to emphasize and focus on achieving better performance and public support of the Avon Hill Commission, through recommendations of the type summarized on pages 4 and 5 of the March 27, 2006 Working Outline, rather than to include additional review alternatives for overruling or second guessing determinations by the Commission."

The Committee members concurred with Mr. King's conclusions.

### C. Consolidation with the Proposed Lower Common Neighborhood Conservation District

The Committee discussed the issue of whether it would be advisable for the Avon Hill Neighborhood Conservation District to merge with the proposed Lower Common Neighborhood Conservation District. The advantages would be that the combined district would offer a larger pool of candidates for appointment to the commission, as well as a larger case load. The Committee decided that a merger did not seem appropriate because of the differing goals and developmental issues facing these NCDs.

**Recommendation 17:** The Historical Commission should consider recommending that the City Council amend the NCD Ordinance so as to consolidate some of the city's smaller NCDs under one overall NCD commission.

*Explanation:* The Historical Commission's experience with the increasing number of small neighborhood conservation districts indicates that the public interest would be served by establishing a new neighborhood conservation district commission that would assume jurisdiction over all of the smaller existing neighborhood conservation districts, including the Avon Hill, Half Crown, and Marsh districts, and any new districts that would be established in the future. The Mid Cambridge Neighborhood Conservation District Commission would remain independent, and the Harvard Square Conservation District would remain under the jurisdiction of the Cambridge Historical Commission.

The primary reasons for advocating the consolidation are:

- The consolidated commission would provide a significantly larger pool of residents from which to draw members and alternates.
- The frequency of recusals stemming from potential conflicts of interest caused by the propinquity of members and applicants would be reduced.
- The small additional caseload would provide a steadier flow of cases for review, enhancing continuity and consistency of the commission's deliberations.
- Efficiency of administration of the separate districts would be improved by reducing the number of NCD commissions administered by the Historical Commission staff.